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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket No. 96-128

In the Matter of)
)
Implementation of the Pay Telephone)
Reclassification and Compensation)
Provisions of the)
Telecommunications Act of 1996)

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REPLY COMMENTS OF
RCN TELECOM SERVICES, INC.

RCN Telecom Services, Inc. ("RCN"), through undersigned counsel and pursuant to the Federal Communications Commission's ("Commission") Public Notice of August 5, 1997, hereby submits its Reply Comments in the above-referenced proceeding.¹ RCN refutes contentions that the default compensation rate for subscriber 800 and access code calls should *exceed* the Commission's market-based coin call rate. For the reasons provided below, the Commission should reject the *post hoc* rationalizations presented by these commenters as they attempt to add costs to the Commission's use of a market-based default rate. Instead, the Commission should act on the basis of the overwhelming amount of evidence showing -- as the United States Court for the District of Columbia has noted² -- that the costs of local coin calls are substantially higher than those for coinless calls, and if it is going to use a market-based approach, set the default rate for subscriber 800 and access code calls at significantly less than the local coin rate.

¹ FCC Public Notice, DA 97-1673 (August 5, 1997).

² *Illinois Public Telecomm. Ass'n*, 117 F.3d 555, 563 (D.C. Cir. 1997) (stating that "IXCs showed that costs of local coin calls are higher because the PSP bears the costs of originating and completing local calls; by contrast, for coinless calls, the PSP only bears the costs of originating the calls").

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I. THE COMMISSION MUST REJECT EFFORTS TO INCLUDE EXCESSIVE AND UNNECESSARY COSTS IN CALCULATING THE TOTAL COST OF COINLESS CALLS.

A. The Cost of Coin Equipment and Coin-Related Functions Should Be Directly Allocated to Coin Calls.

If the Commission is going to utilize a market-based approach to set the default coinless call compensation rate, the Commission must reject the efforts by the RBOC/GTE/SNET Coalition (“Coalition”) and the American Public Communications Council (“APCC”) to inject excessive coin-related costs into the calculation of such a rate. Specifically, the Coalition and APCC contend generally that “payphones could not be supported unless they were capable of handling coin calls,”³ and therefore they conclude that coin-related costs must be supported by coinless calls as well.⁴

Such an analysis ignores the fact that payphone service providers (“PSPs”) already benefit substantially from the significant number of coin calls from payphones. Despite the PSPs’ outrage at their failure until now to receive compensation for coinless calls, coin calls constitute the vast majority of calls made from payphones. According to figures recently released by the APCC, 72% of calls received from the average independent payphone are local and 1+ coin calls.⁵ PSPs therefore already benefit from the presence of coin equipment and coin collection activities, in terms of their ability to handle (and collect compensation for) this significant amount of calls. Thus, it can fairly be said that coin equipment, coin collection, and other coin-related costs are *directly* related

³ Comments of the Coalition, at 16 (filed Aug. 26, 1997). Unless noted otherwise, all references to Comments filed by parties are made to the round of comments filed August 26, 1997 with the Commission.

⁴ Comments of the Coalition, at 17; Comments of APCC, at 12.

⁵ “The Numbers are in . . . ,” *Perspectives*, at 35 (Aug. 1997).

to the process of carrying coin calls,⁶ and provide PSPs with direct benefits for the placement of such calls. By contrast, the minority of calls from payphones that are subscriber 800 or access code calls do not cause the PSP to incur any further coin-related costs.

Although the payphone industry now argues otherwise -- trying instead to mask these coin-related costs as joint and common -- the Commission should note that these revised arguments contradict the APCC's earlier statement that, "[a]rguably the local coin rate should be *higher* than the rate for a [coinless] call because of the usage and coin collection costs typically associated with local coin calling."⁷ The Commission should not allow the APCC to now retreat from this statement by attempting to foist excessive coin-related costs onto unrelated coinless calls under the guise of joint and common costs. Section 276 of the Telecommunications Act of 1996 ("1996 Act") simply requires that PSPs "are fairly compensated for each and every completed intrastate and interstate call using their payphone."⁸ RCN submits that PSPs already receive fair compensation for coin-related costs through local coin calls, without any need for recovery of additional costs through coinless call rates. Since coin calls make direct use of coin-related equipment and provide a substantial benefit to PSPs, and since the payphone industry has already admitted that the local coin rate is arguably

⁶ AT&T and Sprint, in their Comments, provide prime examples of the coin-related costs to be subtracted from the local coin rate under a market-based approach: (1) costs relating to coin functionality in the telephone, including equipment, maintenance, repair, shipping, staff, and coin collection costs; (2) costs of switching and termination of local calls; and (3) other cost categories that are not properly allocable to compensation for dial-around and subscriber 800 calls, including premises owner commission payments. *See* Comments of Sprint, at 9; Comments of AT&T, at 14.

⁷ Comments of APCC, at 16, n.15 (filed July 1, 1996).

⁸ 47 U.S.C. § 276(b)(1)(A) (1996).

higher as a result of these costs, coin calls should continue to bear the burden of compensating the PSP for coin-related costs. Notwithstanding the payphone industry's attempts to characterize these costs as joint and common, and to further inflate them through an application of "demand elasticity,"⁹ the fact remains that the coin-related costs noted above in footnote six are directly related to the costs of handling coin calls, and PSPs are already fairly compensated for these costs through the local coin rate.¹⁰

B. IXC's Should Not be Made to Pay for Commission Payments from PSPs to Location Owners.

The Commission's analysis of the default rate must not stop at an analysis of the direct costs incurred by PSPs in providing coin calls and coinless calls respectively. As AT&T and Sprint highlight in their Comments, the Commission must ensure that PSPs do not impute the costs of

⁹ See Comments of the Coalition, at 20-24. The Coalition's analysis of demand elasticity seems to assume that this is a market with "high joint and common costs" in the maintenance of coin-capable payphones. *Id.* at 20. Once these costs are found instead to be related directly to the process of carrying a coin call, the Coalition's effort to further inflate the coinless call rate through a "demand elasticity" analysis must be rejected as well.

¹⁰ The Commission should also note that if it will continue to utilize a "market-based" deregulated coin rate as the baseline for determining the costs of a coinless call, NYNEX's recent filings in Massachusetts show that the deregulated coin rate is likely closer to \$0.25 than \$0.35 (and that the actual costs of providing service are even lower). See *Investigation by the Department of Public Utilities on its own motion*, D.P.U. 97-18, Order, (Apr. 14, 1997). As RCN stated in its initial comments, the \$0.35 rate is based upon an analysis of four *rural* states (Iowa, Nebraska, North Dakota and Wyoming), accounting for only 2% of the total number of payphones in service. None of these states is densely populated, and accordingly, the costs associated with a PSP's completion of local coin calls in these states are likely much higher than they would be on average, nationwide. Thus, if the Commission will retain the market-based approach, it should, at a minimum, consider using the Massachusetts proposal instead as a more appropriate baseline for the deregulated local coin call rate and for calculation of the default coinless call rate.

commission payments to location owners into the default compensation rate.¹¹ Quite simply, there is no guarantee that these contracts provide for reasonable rates, and passing along the costs of such payments to IXC's through the default compensation rate would be unfair. Imputing such costs into the default compensation rate introduces risks that have not been agreed to by the companies that will pay this compensation. As AT&T summarizes, "[T]he Commission would have to decide what constitutes a reasonable commission rate that would be recoverable by PSPs."¹² Moreover, without proper safeguards, the PSPs would have no incentives to keep commission rates low, since they will be assured of recovering whatever payments they make to location owners by passing the costs along to IXC's. Therefore, in order to avoid a full inquiry into the reasonableness of commission rates and an unchecked rise in the level of commission payments, this Commission should ensure that the costs of commission payments are omitted from the default compensation rate.

C. IXC's Should Not Be Made to Pay for ANI Information Provided by PSPs.

Similarly, the Commission should reject the suggestion by the Coalition that IXC's be made to compensate PSPs for the provision of ANI information to IXC's because these costs would not be incurred but for subscriber 800 and access code calls.¹³ The Coalition states, "As Professor Hausman and Arthur Andersen both explain, the cost of meeting this demand is chargeable, and represents an additional cost unique to subscriber 800 and access code calls." *Id.* Arthur Andersen's conclusion seems to be based upon the premise that because PSPs will need to provide ANI information in order

¹¹ Comments of AT&T, at 15; Comments of Sprint, at 9-10.

¹² Comments of AT&T, at 15.

¹³ See Comments of Coalition, at 17.

to obtain compensation for subscriber 800 and access code calls, the cost of providing this information should be chargeable to IXC.¹⁴ Similarly, Dr. Hausman concludes that “an additional cost arises if PSPs are required to pay for the delivery of ANI ii coding digits, or other payphone identification information, to be eligible for per-call compensation.”¹⁵

At the simplest level, however, these conclusions ignore the fact that it is the PSP -- not the IXC -- who will receive the ultimate benefit of providing the necessary ANI information. IXCs can carry subscriber 800 and access code calls without having ANI information programmed into the switch, but PSPs will suffer without compensation as they wait for IXCs to determine which calls came from payphones. If the PSPs want to obtain their compensation in a timely manner, in the plainest terms possible, they must provide the IXCs with the information digits necessary to track those calls. The IXCs are accepting the responsibility placed upon them in the Commission’s *Report and Order* and *Reconsideration Order*, in which the Commission ruled that because they benefit from carrying the call, they should bear the burden of paying PSPs for the call.¹⁶ Consistent with this benefit-burden analysis, the Commission should find that if PSPs are to receive the benefit of compensation for dial-around calls from their payphones, the PSPs should at least bear the burden of identifying their payphones to carrier-payors. Indeed, pursuant to the PSPs’ rationale, the IXCs should be permitted to subtract the costs they are incurring, in generating tracking and billing

¹⁴ Andersen Report, at 5.

¹⁵ Hausman Declaration, at 8-9.

¹⁶ See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, 20584, at ¶ 83 (1996) (“*Report and Order*”); Order on Reconsideration, 11 FCC Rcd 21233, 21275, at ¶ 88 (1996) (“*Order on Reconsideration*”).

systems, from the compensation paid to the PSPs.

II. THE COMMISSION MUST REJECT YET AGAIN THE SPECIOUS ARGUMENTS THAT PER-CALL COMPENSATION SHOULD BE BASED ON 0+ COMMISSIONS AND OTHER “MARKET-BASED SURROGATES.”

In its Comments, the APCC reasserts its position that the local coin rate is “at the low end of the range of credible surrogates regarding the market price of a payphone call,”¹⁷ and both the APCC and the Coalition urge the Commission to consider utilizing 0+ commission levels or other rates in lieu of the local coin rate.¹⁸ As a preliminary matter, it should be noted that these parties never state clearly why these surrogates are more appropriate than the local coin rate. The only clear point from the arguments made by these parties is that these surrogates are *higher* -- not necessarily better -- than the local coin rate in serving as a baseline for a default coinless compensation rate. Indeed, 0+ and other surrogates are not appropriate indicators of a market based rate because they are devoid of the one factor necessary for setting a market rate--competition. It would be internally inconsistent to utilize commissions negotiated before competition exists as a market-based rate. As Frontier noted in its comments, a major reason why commissions on 0+ traffic are maintained at a high level is because of the captive nature of the audience.¹⁹ For reasons which have been noted repeatedly throughout this proceeding and which do not need to be belabored here, when users need to make payphone calls, they are unlikely to forego the call, especially if there is only one payphone available. Therefore, 0+ commissions are actually *less* likely to be indicative of a market rate than

¹⁷ Comments of the APCC, at 7.

¹⁸ Comments of the APCC, at 7-10; Comments of the Coalition, at 24-26.

¹⁹ Comments of Frontier, at 5.

the local coin rate.

As a legal matter, with regard to the Commission's using the local coin rate as a baseline for dial-around compensation, the D.C. Circuit opinion in *Illinois Public Telecomm. Ass'n* did not preclude the Commission from utilizing the local coin rate as a market-based baseline, but only directed the Commission to ensure that if a market-based rate is employed, whatever rate the Commission establishes for coinless calls reflects only coinless call costs.²⁰ The APCC and the Coalition present no evidence suggesting why, if the Commission is going to use a market-based approach, the Commission should now set a coinless rate based on monopoly surrogates rather than the local coin rate or another more accurate determination of a market rate minus coin-specific costs. It is interesting that the APCC and the Coalition seem to believe that a market based rate is actually a higher rate than the local coin rate, when the theory behind a free market is that competition would drive prices down.

It should also be noted that the argument for these market-based surrogates has been raised before by these parties, flatly rejected by this Commission, and thus must be rejected here on remand. In its Comments, the APCC quotes the very paragraph in the *Report and Order* in which the Commission rejected the use of 0+ commission levels on the ground that "use of 0+ commission data would tend to overcompensate PSPs"²¹ The APCC cites this paragraph in an effort to now prompt reconsideration of the Commission's rejection of 0+ commission levels as an appropriate surrogate.

²⁰ *Illinois Public Telecomm. Ass'n*, 117 F.3d at 563-564.

²¹ Comments of the APCC, at 8 (*quoting Report and Order*, 11 FCC Rcd at 20577, ¶ 69).

The APCC's effort to urge reconsideration comes too late. If the APCC and the Coalition believed so forcefully that the 0+ commission level or other surrogates were superior to the local coin rate, then why is there no record of any challenge to the local coin rate as a baseline for the default coinless call compensation rate in the *Order on Reconsideration*?²² The record in fact indicates that APCC previously believed that the local coin rate was an approximately correct amount of compensation. Now, however, the APCC and its allies have changed their opinion in light of the D.C. Circuit's ruling that the coin rate cannot serve as a surrogate for a coinless call rate without the removal of coin-specific costs. Indeed, the D.C. Circuit's ruling plainly requires that the rate for coinless calls be lower than the local coin rate. The Commission cannot allow these parties to inject arguments into this proceeding which are inconsistent with their earlier positions, particularly when these parties failed to argue upon reconsideration against the use of the local coin rate as a baseline for default compensation.

²² The APCC is cited in the Commission's *Order on Reconsideration* as a party commenting *in defense of* using the local coin rate as "within the range of reasonable cost estimates established on the record." *Order on Reconsideration*, 11 FCC Rcd, at 21254, ¶ 42 (citing Comments of the APCC, at 13 (filed July 1, 1996)). The only petitions cited in the *Order on Reconsideration* addressing the compensation amount were filed by AT&T, MCI, PCIA, PageNet, LDDS, Cable & Wireless, AirTouch, Sprint, WPTA, the Inmate Coalition, and Invision. See *Order on Reconsideration*, 11 FCC Rcd, at 21249-21251, ¶¶ 33-37. WPTA argued that the default compensation rate should be set higher using a *marginal cost-based* approach, while the Inmate Coalition and Invision argued that a special per-call compensation rate was warranted for *inmate payphone providers*. The other petitioners noted above in this footnote argued *against* the use of a \$0.35 default coinless call compensation rate based upon the local coin rate.

III. CONCLUSION

For the foregoing reasons, RCN respectfully requests that the Commission act in accordance with the recommendations set forth above.

Respectfully submitted,



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Dated: September 9, 1997

CERTIFICATE OF SERVICE

I, Margaret Mackey, hereby certify that a copy of the foregoing **Reply Comments of RCN Telecom Services, Inc., CC Docket No. 96-128** was sent to each of the following parties by hand delivery (denoted with asterisk) and regular mail on this 9th day of September, 1997.

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